

**BOARD OF APPEALS CASE NO. 4709**

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**BEFORE THE**

**APPLICANT: SHELTER DEVELOPMENT LLC\***

**ZONING HEARING EXAMINER**

**REQUEST: Special Exception & variances \*  
to construct a nursing home in the R2  
District; Ring Factory Road, south of Bel Air \***

**OF HARFORD COUNTY**

**HEARING DATE: August 11, 1997**

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**Hearing Advertised**

**Aegis: 7/9/97 & 7/16/97**

**Record: 7/11/97 & 7/18/97**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Shelter Development, L.L.C. (hereinafter, "Shelter") is requesting the following relief:

- A. Special exception approval pursuant to Section 267-53(F)(7) of the Harford County Zoning Code ("Code") to conduct an assisted living facility/nursing home use (the "Facility") on the subject property, zoned R2 as shown on the attached site plan.**
- B. A variance pursuant to Section 267-11 of the Code from the requirements of Section 267-36(B) Table V Design Requirements for Specific Uses of the Code to enable the Facility to be operated with a minimum building or use setback from an adjacent residential lot of less than 50 feet (13 feet proposed) as shown on the attached site plan.**
- C. A variance pursuant to Section 267-11 of the Code from the requirements of Section 267-36(B) Table V Design Requirements for Specific Uses of the Code to enable the Facility to be operated with a minimum side yard setback of less than 40 feet (13 feet proposed) as shown on the attached site plan.**
- D. A variance pursuant to Section 267-11 of the Code from the requirements of Section 267-36(B) Table V Design Requirements for Specific Uses of the Code to enable the Facility to be operated with a maximum building height greater than 35 feet (49 feet proposed) as shown on the attached site plan.**
- E. A variance pursuant to Section 267-41(D)(6) of the Code to disturb the 75 foot non-tidal wetlands buffer required by Section 267-41(D)(5)(e) (0 feet proposed) as shown on the attached site plan.**
- F. A variance pursuant to Section 267-41(D)(6) of the Code to disturb non-tidal wetlands as shown on the attached site plan.**

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On July 2, 1997, the Applicant amended its application by adding a request for the following relief:

If necessary, the Applicant requests a variance from the provisions of Section 267-41(D)(2)(c) of the Code (and subsections D(4)(b) and (5)(b) cited therein) to permit development of or disturbance on the subject property within 150 feet on both sides of the center line of the stream located on the subject property (0 feet proposed) as shown on the site plan.

The subject property is designated among the records of the State Department of Assessments and Taxation as Tax Map 49, Parcel 385 and is zoned R2, Urban Residential. The property is located at Ring Factory Road, South of Bel Air, consists of 5.006 acres more or less, and is located entirely within the Third Election District. The subject property is presently zoned R2.

Prior to the taking of testimony, counsel for the Applicant and the People's Counsel, Robert F. Kahoe, Jr., entered into an agreement. Mr. Kahoe explained that he had entered his appearance in opposition to the Applicant's case on behalf of the Office of the People's Counsel and on behalf of many homeowners in the WestGate subdivision ("Homeowners"). He indicated that as a result of negotiations between his clients and the Applicant, two (2) written agreements had been signed by the parties. The first agreement was between Shelter, the Homeowners and the People's Counsel (the Shelter Agreement"); the second was between the Homeowners, the People's Counsel, Joseph D. Deigert, Michael A. Euler, Sr., and Westleigh LLC. The Shelter Agreement provides that in the event zoning approval for the Facility was granted, conditions of approval set forth therein would be imposed and the Homeowners would support the instant application. Mr. Kahoe indicated that the parties had agreed that if the Applicant would agree to the conditions contained in the Shelter Agreement being incorporated into any approval granted by the Hearing Examiner, he would withdraw his appearance from the case on behalf of the Office of People's Counsel and the Homeowners. Counsel for the Applicant and Philip Golden, Vice President of Shelter, confirmed that the agreement as described by the People's Counsel was correct and acceptable to Shelter. At that point, the People's Counsel withdrew his appearance.

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Counsel for the Applicant indicated that a revised site plan had been submitted since the application was originally filed. As a result, the specific requests for relief had changed. It was pointed out that in addition to requesting special exception approval for the Facility and a variance to allow a minimum building or use setback of less than 50 feet (13 feet proposed), Shelter was requesting a variance to allow the building to be located with a side yard setback of less than 40 feet (30 feet proposed), a variance to allow the building to be constructed with a maximum building height of 45 feet, a variance to permit a non tidal wetlands buffer of less than seventy-five (75) feet (approximately 68 feet proposed) and a stream buffer of less than 150 feet (approximately 75 feet proposed) all as shown on the revised site plan. Shelter also withdrew its request for a variance to disturb non-tidal wetlands.

The first witness to testify on behalf of the Applicant was Mr. Golden. He testified that Shelter has been involved in the development, financing and management of residential real estate since 1982. Since that time, Shelter has developed 4,156 housing units, 1,881 units of which are independent senior housing units. Mr. Golden stated that Shelter has made application for special exception approval and variances for an assisted living facility to be constructed at the corner of Ring Factory Road and Maryland Route 24. He explained that an assisted living facility combines housing, hospitality services, personalized assistance and health care designed to assist frail elderly citizens with activities of daily living. Mr. Golden testified that the subject property is owned by Michael Euler and Joseph Deigert. Shelter is the contract purchaser of the subject property. The contract for the subject property is contingent upon zoning approval to construct the Facility being granted.

Mr. Golden testified that there is a definite need for an assisted living facility in Harford County as evidenced by the letter of support its proposal received from the Harford County's Office on Aging attached to the staff report. He indicated that the subject property is an ideal site as it is wooded, is in close proximity to the new hospital and is located in a residential area.

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**Mr. Golden testified that the Facility will contain 75 units with 87 beds. He indicated that it will be operated in compliance with all required state licenses and will be open 24 hours per day, 7 days per week.**

**Using the site plan introduced as Applicant's Exhibit No. 6, Mr. Golden pointed out the location of the proposed building, access from Ring Factory Road and the parking area. He noted that the building had a U-shaped footprint with a residential pitched roof. Extensive landscaping will be implemented. Limited exterior lighting will be used and a lighted sign subject to Harford County zoning regulations will be erected.**

**Mr. Golden said that the height variance for the building and setback and buffer variances were all necessary to build the Facility. He indicated that denial of the requested variances would cause the Applicant practical difficulty in that the Facility could not be built without them. He explained that in discussions with neighboring property owners, many other building and site designs were considered and rejected. Shelter changed the proposal dramatically to address resident concerns.**

**Mr. Golden went on to say that granting the requested relief would not harm anyone in any way since the Facility is a low impact use conducted in an attractive building. On the contrary, Mr. Golden indicated that approval of the Applicant's request would benefit Harford County by meeting the community's need for this type of facility.**

**In conclusion, Mr. Golden indicated that he had reviewed the Department of Planning and Zoning's Staff Report issued in the case which recommended approval subject to six (6) conditions. He indicated that conditions 1, 2, 4, 5 and 6 were acceptable to the Applicant. Mr. Golden also stated that condition number 3 was also acceptable to Shelter provided it was amended to reflect the correct number of units and beds requested. Mr. Golden also confirmed that the conditions of approval contained in the Shelter Agreement were also acceptable to Shelter.**

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The next witness to testify on behalf of the Applicant was Michael Fisher, an expert landscape architect. Mr. Fisher explained that he and his firm, Site Resources, Inc., prepared the site plan for the Facility. He indicated that the subject property was constrained by the setback requirements of the Zoning Code, non-tidal wetlands, the NRD buffer and the 150 foot stream buffer located on the site. He pointed out that only a very small portion of the site was developable. As a result, he was not able to locate the building on the site without the requested variances. He noted that all required parking was provided and that the project would be served by public water and sewer. He indicated that storm water management would be provided in accordance with applicable County regulations which would filter storm water runoff to prevent impact to the environmental features on the site. He testified that except for the requested variances, the Facility complied with all applicable governmental requirements.

The next witness to testify was Edward Hord, an expert architect. He indicated that he had designed the Facility depicted on Applicant's Exhibit No. 10. He testified that he was charged with designing a building with a residential appearance which would be compatible with the surrounding neighborhood. He stated that he could not build the Facility and satisfy the Applicant's requirements without the requested height variance. He pointed out that a building with a flat roof could, in theory be constructed, without requiring a variance. However, he pointed out that such a building would be unattractive, would not have the residential appearance that the pitched roof provides and was not acceptable to neighboring property owners.

Mr. Hord testified that the building will be equipped with sprinklers and will be accessible to fire fighting equipment. In conclusion, he testified that no adverse impact of any kind would result from granting the requested height variance.

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The next witness to testify on behalf of the Applicant was Mickey Cornelius, an expert traffic consultant. Mr. Cornelius explained that his firm, The Traffic Group, Inc., had been retained to perform a traffic impact analysis in connection with the Facility. He testified that he conducted a field inspection, conducted turning movement traffic counts during the peak morning and evening periods at key intersections, projected future traffic volumes along Route 24, determined the amount of traffic generated by the Facility and assigned it to the road system. He also testified that he examined the proposed access point for the Facility to determine its adequacy.

Mr. Cornelius testified that his analysis indicated that if the Facility were constructed, all key intersections would continue to operate at acceptable levels of service and given the low traffic impact generated by assisted living facilities, no adverse traffic impacts would result. He further testified that the proposed access point provided acceptable sight distance. He indicated that the detailed findings which supported his opinion were contained in his report which was filed with the application.

The next witness to testify on behalf of the Applicant was Robert Johnson, an expert real estate appraiser. Mr. Johnson testified that he had been retained by the Applicant to determine what impact, if any, approval of the Facility would have on values of adjoining properties. He explained that in his analysis, he studied residential sales transactions in the immediate vicinity of the Sunrise of Towson assisted living facility which was constructed in 1994 and contained 77 beds. He indicated that he selected the Sunrise facility for comparison purposes because it was an attractive 3 story building located in an established residential area and would be very similar to the proposed Facility.

Mr. Johnson stated that he examined 15 paired sales, i.e. sales of homes in the vicinity of the Sunrise facility which occurred both before and after the Sunrise facility was constructed to determine the effect of the Sunrise facility on property values. In order to insure that the results of his analysis were accurate, he also excluded transactions of less than \$100,000.00 in order to exclude sales of unimproved lots or marginally improved properties.

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Finally, Mr. Johnson stated that he analyzed tax assessment records from 1993 (prior to the construction of the Sunrise facility) and 1996 (after construction of the Sunrise facility) to determine if assessments were affected as a result of the construction of the Sunrise facility.

Mr. Johnson testified that his analysis indicated that the Facility did not have any negative impact on the values of adjoining properties. He stated that based on his analysis, it was his expert opinion that construction of the Facility would likewise have no impact on the value of adjoining properties. He indicated that the detailed findings which supported his conclusions were contained in his report which was admitted into evidence as Applicant's Exhibit No. 14.

The next witness to testify on behalf of the Applicant was Richard Pais, an expert wildlife biologist. Mr. Pais explained that he was retained by the Applicant to analyze possible impacts to on site environmental features as a result of construction of the Facility.

Using Applicant's Exhibit No. 8, Mr. Pais pointed out the location of the relocated Plum Tree Run stream, the location of non tidal wetlands, the 75 foot non tidal wetlands buffer and the 150 stream buffer required by the Harford County Code. He indicated that except for permitted road crossings, no disturbance of non-tidal wetlands or the stream would occur. He noted that very minor impacts to the stream and NRD buffers would occur if the Facility were approved. He explained that the buffers which will be provided if the Facility were approved, i.e., approximately 68 feet for the NRD buffer and 75 feet for the stream buffer, will be more than adequate to protect the non-tidal wetlands and stream. He noted that the vast majority of the site will remain undisturbed. Mr. Pais testified that approximately 78% of the site is impacted by wetlands and steep slopes and, therefore, undevelopable. Thirty percent (30%) of the remaining developable area of the site has slopes in excess of 10%. He stated that, unlike the subject property, other properties in the area are not impacted by these site constraints to the same extent. He pointed out that 24% of the WestGate subdivision and 34% of the Valley Oaks subdivisions, are undevelopable.

Mr. Pais testified that based on his analysis, approving the proposed Shelter facility would not adversely affect the NRD, NRD buffer, Plum Tree Run or the stream buffer. Approved reforestation of disturbed areas and measures employed during construction, such as erection of super silt fences, will minimize impacts to the greatest extent possible. He pointed out that

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proposed storm water management measures will filter runoff before it enters the non-tidal wetlands or Plum Tree Run. He testified that the detailed findings which supported his conclusions were contained in his report which was introduced as Applicant's Exhibit No. 15.

The next witness to testify on behalf of the Applicant was Denis Canavan who was accepted by the Hearing Examiner as an expert land planner. Mr. Canavan explained that he had been retained by the Applicant to analyze its special exception and variance request for nursing home approval. He testified that he had reviewed the application, exhibits, staff report and had personally visited the subject property. Mr. Canavan stated that he agreed with the staff report that the Facility falls within the definition of "nursing home" contained within the Code. Mr. Canavan confirmed the Staff's conclusion that with the exception of the requested area variances, the Applicant's proposal meets or exceeds all of the requirements of the Code.

Mr. Canavan indicated that operation of the Facility would be compatible with other uses permitted as of right in the R2 district. Mr. Canavan testified that based on the evidence presented by the Applicant's previous witnesses, granting the special exception would not cause any adverse impact to surrounding properties. Mr. Canavan went on to say that he agreed with the Staff that each of the Limitations, Guides and Standards set forth in Section 267-9(l) of the Code were satisfied. Mr. Canavan further stated that based on his knowledge, experience and education, in his opinion, the Facility operated from the subject property would not generate adverse effects significantly different in character or intensity from the effects inherent in the operation of a identical facility located elsewhere in the R2 district. He pointed out the extensive landscaping which would be provided, the attractive, residential appearance of the proposed building, the testimony of Mr. Cornelius that no adverse traffic impacts would result and the testimony of Mr. Johnson that no adverse impacts on property values would result support his conclusion.



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Regarding the Applicant's variance requests, Mr. Canavan stated that the subject property was definitely unique in that it was impacted to a much greater extent by non tidal wetlands and stream buffers than adjoining properties, had an irregular shape and fronted on two major roads. He indicated that, based on the testimony of Mr. Golden, it was his opinion that denial of the variances would cause the Applicant practical difficulty. He indicated that based on the testimony of the Applicant's witnesses, granting the requested variances would not be detrimental to adjoining properties or materially impair the purpose of the Code or the public interest.

The final witness to testify on behalf of the Applicant was Mr. Gene Oaksmith of 526 Hanna Road in the WestGate subdivision. Mr. Oaksmith indicated that he and his neighbors in WestGate fully supported the Applicant's request.

Mr. Anthony S. McClune, Chief of Current Planning for the Department of Planning and Zoning, summarized the Staff Report issued in this case which recommended conditional approval. He stated that the Department felt that granting the requested variances will have no adverse impact on neighboring properties and that the tests for variances set forth in the Code had been met. Furthermore, Mr. McClune testified that the Department recommended approval of the requested special exception as well.

No Protestants appeared in opposition to the Applicant's request.

### **CONCLUSION:**

Section 267-53 (F)(7) of the Zoning Code provides as follows:

- (2) Nursing homes. These uses may be granted in the AG, RR, R, R1, R2, VR, VB, and B1 Districts provided that:
  - (a) A minimum parcel area of five (5) acres is established and a maximum building coverage of forty percent (40) of the parcel is provided.
  - (b) The setbacks of the district for institutional uses shall be met.
  - (c) The density shall not exceed twenty (20) beds per acre of the parcel.

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Under Section 267-51 of the Zoning Code (the “Code”), special exceptions may be granted when determined to be compatible with the uses permitted as of right in the appropriate district by the Code.

Section 267-36(c) Table V Design Requirements for Specific Uses in the R2 district requires a minimum building or use setback from an adjacent residential lot of 50 feet.

Section 267-36(c) Table V Design Requirements for Specific Uses in the R2 District requires a minimum side yard setback of 40 feet.

Section 267-36(c) Table V Design Requirements for Specific Uses in the R2 District requires a maximum building height of 35 feet or 3 stories.

Section 267-41(D)(2)(c) provides that the Natural Resources District area for stream protection shall be a minimum distance of one hundred fifty (150) feet on both sides of the center line of the stream or fifty (50) feet beyond the one hundred year floodplain, whichever is greater....

Section 267-41(D)(5)(e) provides that non-tidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.

Section 267-41(D)(6) provides that the Board may grant variances to Subsection D(5) upon a finding by the Board that the proposed development will not adversely affect the Natural Resources district.

The Code, pursuant to Section 267-11, authorizes the granting of variances provided the Board finds that (1) by reason of the uniqueness of the property or topographical conditions literal enforcement of Part 1 will result in practical difficulty or unreasonable hardship; and (2) the variance will not be substantially detrimental to adjacent properties and will not materially impair the purposes of this Part 1 or the public interest.

Courts in Maryland have had occasion to discuss the burden of proof that must be met by an applicant in a special exception case.

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Under Maryland law, the special exception use is part of the comprehensive zoning plan sharing the presumption, that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in a particular case is in harmony with the general purpose and intent of the plan. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981) ("Schultz").

While the applicant in such a case has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements of the zoning code, he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material; but if there is not probative evidence of harm or disturbance in light of the nature of the zoning involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for special exception is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-551 (1973) ("Turner"). The appropriate standard to be used in determining whether a requested special exception use should be denied is whether there are facts and circumstances that show the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. See Schultz at 432 A.2d 1327.

Such facts and circumstances must be strong and substantial to overcome the presumption that the proposed use be allowed in the district. Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716, 724 (1974) ("Anderson").

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In the recent case of Mossburg v. Montgomery County, 107 Md. App. 1, 666 A. 2d 1253 (1995) (“Mossburg”) the Court of Special Appeals had occasion to restate and clarify the law in Maryland regarding special exceptions. There the Court found that the Board of Appeals of Montgomery County improperly denied a special exception for a solid waste transfer station in an industrial zone. In reversing the Circuit Court, which upheld the Board's decision, the Court of Special Appeals found that the decision to deny the special exception was not based on substantial evidence of adverse impact at the subject site greater than or above and beyond impact elsewhere in the zone and, therefore, the decision was arbitrary and illegal. There the Court said,

The question in the case *sub judice*, therefore, is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly it will and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and beyond, *i.e. greater here* than they would generally be elsewhere within the areas of the County where they may be established... In other words, if it must be shown, as it must be, that the adverse effects at the particular site are greater or “above and beyond”, then it must be asked, greater than what? Above and beyond what? Once an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere. (emphasis supplied)

Id. at 666 A.2d 1257.

Thus, the Court of Special Appeals emphasized that once the applicant shows that it meets the requirements for the special exception under statute, the burden then shifts to the protestants to show that impacts from the use at a particular location are greater at this location than elsewhere. If the protestants fail to meet that burden of proof, the requested special exception must be approved.

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The unrebutted and uncontradicted evidence presented clearly shows that the Applicant met its burden of proof to justify the granting of the requested special exception. The evidence presented clearly shows that the Applicant meets or exceeds every Code requirement regarding the Facility with the exception of the area variances. Assisted living facilities are inherently low impact uses. The Facility is well landscaped and attractively designed. As indicated in the Shelter Agreement, virtually all property owners in the vicinity support the Applicant's request.

There was no evidence of any adverse impact resulting from the Facility whatsoever. Thus, there was no evidence that any adverse impacts from the Facility would be significantly different in character or intensity from the effects inherent in the operation of an assisted living facility irrespective of its location in the R2 zone. Accordingly, the tests set forth in Schultz and Mossburg were met here. Based on all of the relevant facts presented, the Hearing Examiner recommends that the requested Special Exception be granted.

The concept of uniqueness in variance cases was discussed by the Court of Special Appeals in the case of North v. St. Mary's County, 99 Md. App. 502, 638 A.2d 1175 (1994) wherein the court stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

An example of uniqueness is found in the use variance case of Frankel v. Mayor and City Council, 223 Md. 97, 104 (1960), where the court noted: "He met the burden; the irregularity of the...lot...that it was located on a corner of an arterial highway and another street, that it is bounded on two sides...by parking lots and public...institutions, that immediately to its south are the row houses..."

Id. at 638 A.2d 1181.

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It is generally recognized that a confluence or combination of factors may be considered in determining whether a property is unique. Kilmartin v. Board of Zoning and Adjustment, 579 A.2d 1164 (D.C. App. 1990). The courts have also held that unique characteristics of the property that justify a variance are not limited to those that inure to the land in particular, Capitol Hill Restorations Society v. District of Columbia Board of Zoning and Adjustment, 534 A.2d 939 (DC 1987), but that the use of adjoining and surrounding lands may also be considered. Valley View Civic Association v. Zoning Board of Adjustment, 462 A.2d 637 (DC 1983). Uniqueness does not require a property to be the only property with these characteristics. However, the conditions must be sufficiently rare so that, if all similarly situated properties in the district receive variances, the district would remain materially unchanged. Rathkopf, The Law of Planning and Zoning, Section 38.03 (1988).

The Court of Appeals of Maryland in McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973) held that the following criteria are to be used for determining whether “practical difficulty” has been established:

1. Whether strict compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the use of the property for a permitted purpose or render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

An area variance may be granted where the applicant demonstrates practical difficulty or undue hardship or both.

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Based on the evidence presented, the Applicant has met its burden of proof here. The uncontradicted and unrebutted evidence showed that the subject property is significantly impacted by wetlands, much more so than other properties in the vicinity. As noted in the Staff Report, sewer lines, the subject property's irregular shape and other factors clearly make the subject property unique.

Under McLean v. Soley, denial of the variances would result in practical difficulty to the Applicant. Because of the severe site constraints which the subject property has, without the setback and height variances, the Facility could not be built. Here, denial of the variances would unreasonably prevent the use of the subject property for a permitted purpose, i.e., an assisted living facility. Under all these circumstances, it would be unnecessarily burdensome to require the Applicant to comply with the current zoning regulations. As indicated by Mr. Canavan, the variances requested by the Applicant are the minimum relief necessary to construct the Facility. Thus, no lesser relaxation than that applied for would give substantial relief to the Applicant.

The evidence showed that no adverse impacts of any kind will result from approval of the Facility. Accordingly, granting the requested building height, side yard setback and minimum building or use setback variances will not be detrimental to adjoining properties and will not materially impair the purpose or the spirit of the Code. Based on the staff report and the uncontradicted testimony of Mr. Pais, granting the NRD buffer variance and stream buffer variance will not adversely affect the Natural Resources District. Virtually all owners of properties in the vicinity of the subject property support the Applicant's request. Approving the Applicant's request will enable it to provide care for senior citizens. Thus, all elements of Section 267-11 and Section 267-41(D)(6) are met.

For the above mentioned reasons, the Hearing Examiner recommends that the requested special exception for the proposed assisted living facility and area variances be granted subject to the following conditions:

1. The Applicant submit a site plan for review through the Development Advisory Committee (DAC).
2. All applicable permits be obtained for construction of the facility.

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3. The number of units be limited to seventy-five (75) and the number of beds be limited to eighty-seven (87).
4. The limit of disturbance to the Natural Resource district (NRD) be maintained as shown on the Applicant's exhibit (Attachment 6 to the Staff Report).
5. A landscaping plan including re-vegetation in the NRD buffer be submitted to the Department of Planning and Zoning for review and approval.
6. The Applicant construct the facility in general compliance with the Applicant's site plan.
7. Employees of the Applicant, residents of the proposed assisted living facility and residents' families will be prohibited from trespassing on private properties owned by homeowners in the WestGate subdivision and common areas, including the pond, owned by the WestGate Homeowners Association, Inc.
8. Activities programs for residents of the proposed assisted living facility will not occur on any lands/common area owned by the WestGate Homeowners Association, Inc., or any homeowner in the WestGate subdivision.
9. Applicant will use its best efforts to fence and gate enclosed outdoor areas in an attractive manner, but subject in all respects to the plans approved by Harford County and other applicable local laws.
10. All exterior lighting and sound generating equipment on the assisted living facility and the site will be designed for minimal visual and sound impact on surrounding residential lots.
11. The portion of the subject property to be purchased by Shelter that is not developed as part of the original site plan approved by Harford County will not be developed by Applicant in the future except as necessary to comply with any applicable governmental requirements.
12. As part of its development plan, Applicant will apply for certification of the undeveloped portion of the site as a wildlife preservation area.



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13. As part of the landscaping plans to be submitted to Harford County, Applicant will build in an allowance for up to fifteen (15) large (12 foot minimum) white pines to provide additional buffer along the southern boundary of its property line.

**Date    SEPTEMBER 9, 1997**

**William F. Casey  
Zoning Hearing Examiner**